

## **FAMILY/MEDICAL LEAVE**

Purpose:	To establish procedures for authorizing leaves of absence to employees because of the birth or placement of a child for adoption, or because of a serious health condition of the employee or the employee's child, parent or spouse.
Scope:	This policy applies to all merit and non-merit employees subject to the executive authority of the Governor. This policy does not apply to employees of the State Police Department.
Definitions:	<p>Child: A biological, adopted or foster child, stepchild, legal ward, or child for whom the employee has day-to-day responsibility for care and financial support.<sup>1</sup></p> <p>Parent: A biological or adopted parent or other person who had day-to-day responsibility for care and financial support of the employee when he/she was a child. In-laws do not qualify.</p> <p>Serious Health Condition: Illness, injury, impairment or physical or mental condition involving in-patient care or continuing medically necessary treatment by a health care provider.<sup>2</sup></p> <p>FMLA: The Family and Medical Leave Act of 1993.</p>
Procedures/ Responsibilities:	<u>Eligibility:</u> Employees may request and shall receive an unpaid leave of absence,

---

<sup>1</sup>A child over eighteen (18) qualifies if the child is unable, due to mental or physical disability, to provide for his/her own care.

<sup>2</sup>A period of incapacity of three (3) consecutive calendar days or less is not normally covered unless the incapacity is caused by a condition that was previously covered; an episodic chronic condition (e.g., asthma, epilepsy, diabetes); or pregnancy.

Intermittent leave or a modified work schedule to care for a spouse, child or parent who has a serious medical condition and is dependent upon the employee for care.

Employees may request and shall receive an unpaid leave of absence in conjunction with the birth or placement of a child with the employee for adoption or foster care. Employees may request, subject to the approval of the appointing authority, a modified work schedule or intermittent leave following the birth or placement of a child with the employee. Leaves or schedule modifications must conclude within twelve (12) months after the birth or placement of the child with the employee.

Employees may request and shall receive an unpaid leave of absence to cover the employee's absence for his/her own serious health condition which makes the employee unable to perform any of the essential functions of the employee's position. This includes absences to receive treatment for a serious health condition.

In addition to leave under this policy, employees may also be entitled to accrued paid leave, workers' compensation, short and long term disability and/or coverage under the Americans with Disabilities Act. In such cases, absences will also be charged against the employee's family/medical leave entitlement.

Notice: Whenever possible, the employee shall provide notice of at least fifteen (15) work days of his/her intent to take such leave, and the dates and expected duration of the leave.

The appointing authority must notify an employee when leave is to be charged as family/medical leave.

The appointing authority shall provide the employee a leave notice when designating family/medical leave (Appendix A). If the

notice is not provided, no action can be taken against the employee for failure to comply with the requirements contained in the notice.

Absences may not be retroactively designated as family/medical leave unless the appointing authority does not become aware of the reason until after the leave has begun, or the appointing authority is awaiting receipt of documentation. If the appointing authority fails to properly designate the leave, the employee is entitled to the benefits of this policy, but the absence will not be charged against the employee's family/medical leave entitlement.

Verification: The employee shall provide certification of the birth or placement of a child. For medical leave, a Certification of Health Care Provider may be required and must be provided if the employee is absent five (5) or more days (Appendix B). When leave is foreseeable, the employee should provide the certification prior to the leave.

As soon as practical after receiving notice of the need for an unforeseen (sic) family/medical leave, the appointing authority must provide the employee written notice which indicates whether medical certification will be required (Appendix A). If the leave has already begun, the notice may be mailed to the employee. If practicable, the employee must provide medical certification within fifteen (15) calendar days. The employee shall be provided a reasonable opportunity to correct any problems with the certification.

Except in cases involving workers' compensation or disability, only a State health care provider, with the employee's permission, may contact the employee's health care provider concerning the employee's medical certification. The inquiry cannot be for the purposes of seeking additional information.

If the appointing authority questions the

validity of the employee's medical certificate, the appointing authority may require the employee to obtain a second opinion from a provider designated by the appointing authority. The second opinion may not be obtained from a provider who is employed by or regularly contracts with the State. If the opinions differ, the appointing authority shall provide the employee a list of two (2) or more specialists in the appropriate field. The employee shall select from the list a third health care provider whose opinion shall be final and binding. Both the second and third opinions shall be at the State's expense. Pending resolution of the dispute, the employee shall be provisionally entitled to family/medical leave.

The appointing authority may request recertification of medical conditions under certain circumstances (Appendix C). If the employee fails to provide recertification within fifteen (15) days, when it is practicable to do so, additional family/medical leave may be denied until the recertification is received. Recertification is at the employee's expense. No recertification of second or third opinions may be required.

Scheduling: When an intermittent leave or modified work schedule is medically necessary, the employee and the appointing authority shall attempt to arrange a schedule which meets the employee's needs without unduly disrupting the operations, subject to the approval of the health care provider.

Use of intermittent leave or time off under a modified work schedule may be charged in increments of one hour. Where the employee uses accrued paid leave to cover the absence, it shall be charged against the employee's leave balance in increments of one hour.

Duration: An employee may not take more than twelve (12) weeks of leave under this policy in any twelve (12) month period. For this

purpose, a rolling twelve (12) month period will be used, measured backward from the date leave is used. Where the employee uses intermittent leave or is granted a modified work schedule, only the actual leave time will be charged against the twelve (12) week limit.

Insurance Coverage: While on family/medical leave, the employee shall be entitled to coverage under State health, dental, vision and life insurance on the same terms and conditions in effect at the time leave began, provided the employee continues to pay the required employee share of the premium.

Use of Accrued Paid Leaves: If available and appropriate, employees requesting family/medical leave are required to use ten (10) days of available sick leave prior to receiving unpaid leave. Thereafter, the employee may choose to use appropriate accrued paid leave or unpaid leave. Use of paid leave shall be charged against the twelve (12) week limit provided under this policy. Employees who have exhausted the twelve (12) weeks of leave are not prohibited from using other appropriate accrued leave to which they are entitled.

Return from Leave: Employees returning to work from family/medical leave shall be returned to the same or equivalent position from which they left. Employees are also entitled to be returned to the same shift or equivalent schedule. A return-to-work medical certification is required when the employee has been absent for five (5) or more days.

Non-discrimination: No employee may be discriminated against for their (sic) use of family/medical leave. Use of family/medical leave cannot be considered as a negative factor in promotional and disciplinary decisions; nor can the use of such leave be charged against an employee under an attendance policy.

Record Keeping: All uses of paid and unpaid

leave under this policy must be recorded as family/medical leave on the employee's attendance report. All written documentation pertaining to requests for or uses of family/medical leave must be maintained for at least three (3) years.

Posting: Pursuant to the FMLA, copies of the attached notice must be posted in conspicuous locations (Appendix D).

References:	Family and Medical Leave Act of 1993 31 IAC 1-9 31 IAC 2-11 Union Settlements Americans with Disabilities Act Workers' Compensation Short and Long Term Disability Plans
Supersedes:	Family and Medical Leave Policy, issued February 4, 1994.
Effective Date:	April 1, 1996
Approval:	Jennifer Dworkin Vigran, Director
Appendices:	A. Employer Response to Employee Request for Family and Medical Leave  B. Certification of Health Care Provider (WH 380) C. Recertification of Medical Conditions D. Posting: "Your Rights under the FMLA of 1993 and the State of Indiana's Family/Medical Leave Policy"

[Appendix A]

To:

From:

Subject: Request for Family/Medical Leave

Date:

On \_\_\_\_\_ you notified us of your need to take family/medical leave due to:

\_\_\_\_\_ the birth of your child, or placement of a child with you for adoption or foster care; or

\_\_\_\_\_ a serious health condition that makes you unable to perform the essential functions of your job; or

\_\_\_\_\_ a serious health condition affecting your \_\_\_\_\_ spouse, \_\_\_\_\_ child, \_\_\_\_\_ parent, for which you are needed to provide care.

You notified us that you need this leave beginning on \_\_\_\_\_ and that you expect leave to continue until on or about \_\_\_\_\_.

Except as explained below, you have a right under the FMLA for up to 12 weeks of unpaid leave in a 12-month period for the reasons listed above. Also, your health benefits must be maintained during any period of unpaid leave under the same conditions as if you continued to work, and you must be reinstated to the same or a equivalent job with the same pay, benefits, and terms and conditions of employment on your return from leave.

This is to inform you that:

- 1) You are \_\_\_\_\_ eligible \_\_\_\_\_ not eligible for leave under the FMLA.
- 2) The requested leave \_\_\_\_\_ will \_\_\_\_\_ will not be counted against your annual FMLA leave entitlement.
- 3) \_\_\_\_\_ You will be required to furnish medical certification of a serious health condition within 15 days after you are notified of this requirement or we may delay the commencement of your leave until the certification is submitted.  
\_\_\_\_\_ You will not be required to furnish a medical certification at this time; however, a medical certification may be required at a later date.
- 4) You may be required to furnish recertifications related to serious health condition, consistent with Appendix D of the State's Family/Medical Leave Policy.
- 5) If available and appropriate, ten days of accrued leave shall be used prior to receiving leave without pay. Thereafter, you may choose to use appropriate paid leave or leave without pay.

- 6) (a) If you have insurance under the state's fringe benefit plan and you normally pay a portion of the premiums, these payments must continue during the period of FMLA leave. If you go into out of pay status, you will be billed at home by the carrier.
- (b) You have a minimum 30 day grace period in which to make premium payments for health insurance. Your health insurance can only be canceled if you are given at least 15 days written notice that payment has not been received. However, if you allow your health insurance to lapse, coverage will terminate retroactive to the first date for which premiums were not paid.
- 7) If you are off work five (5) or more days due to a serious health condition, you will be required to present a fitness-for-duty certificate prior to being restored to employment. If such certification is required but not received, your return to work may be delayed until the certification is provided.
- 8) While on leave, you \_\_\_\_ will \_\_\_\_ will not be required to furnish us with periodic reports every \_\_\_\_ days of your status and intent to return to work. If the circumstance of your leave change and you are able to return to work earlier than the date indicated earlier in this correspondence, you \_\_\_\_ will \_\_\_\_ will not be required to notify us at least 2 working days prior to the date you intend to report for work.



[Appendix C]

FAMILY/MEDICAL LEAVE POLICY

RECERTIFICATION OF MEDICAL CONDITIONS

Under the Family/Medical Leave policy, the Appointing Authority may request recertifications of medical conditions in the following circumstances and for the reasons listed below:

- (a) If the reason for leave is pregnancy or a chronic condition, recertification can be requested for reasons (1), (3) or (6).
- (b) If the minimum duration of the period of incapacity specified on the certification furnished by the health care provider is more than 30 days, recertification can be requested for reasons (2), (3), (4) or (5).
- (c) If the leave has been taken intermittently or on a reduced leave schedule basis, recertification can be requested for reasons (2), (3), (4) or (5).
- (d) In circumstances not covered by (a), (b) or (c) recertification can be requested for reasons (1), (3), (4) or (5).

Reasons for requested recertifications:

- (1) 30 days have elapsed since the last certification and the request is in connection with an absence.
- (2) The minimum duration of the period of incapacity specified in a previously submitted certification has expired.
- (3) The employee requests an extension of leave.
- (4) Circumstances described by the previous certification have changed significantly.
- (5) Management has information that casts doubt upon the continuing validity of the certification.
- (6) Management receives information that casts doubt upon the employee's stated reason for absence.

[Appendix D]

YOUR RIGHTS  
under the  
FAMILY AND MEDICAL LEAVE ACT OF 1993  
and the  
STATE OF INDIANA'S FAMILY/MEDICAL LEAVE POLICY

FMLA requires employers to provide up to 12 weeks of unpaid, job-protected leave for certain family and medical reasons.

REASONS FOR TAKING LEAVE: Unpaid leave must be granted for any of the following reasons:

- to care for the employee's child after birth, or placement for adoption or foster care;
- to care for the employee's spouse, son or daughter, or parent who has a serious health condition; or
- for a serious health condition that makes the employee unable to perform the employee's job.

At the employee's or the employer's option, certain kinds of paid leave may be substituted for unpaid leave.

ADVANCE NOTICE AND MEDICAL CERTIFICATION: The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

- The employee ordinarily must provide 15 days advance notice when the leave is "foreseeable."
- An employer may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (sic – opinions) (at the employer's expense) and a fitness for duty to return to work.

JOB BENEFITS AND PROTECTION:

- For the duration of FMLA leave, the employer must maintain the employee's health coverage under any "group health plan".
- Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
- The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

UNLAWFUL ACTS BY EMPLOYERS: FMLA makes it unlawful for any employer to:

- interfere with, restrain, or deny the exercise of any right provided under FMLA;
- discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

ENFORCEMENT:

- The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.
- An eligible employee may bring a civil action against an employer for violations.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or union settlement which provides greater family or medical leave rights.

FOR ADDITIONAL INFORMATION: Contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor.